

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1383 OF 1986

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

-
1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

DR.(MRS.) S.K.AMIN
VERSUS
THE STATE OF GUJARAT & ORS.

Appearance:

MR GAURANG H BHATT for the Petitioner
MR LR PUJARI for Respondents No.1, 2 & 3
MR HJ NANAVATI for Respondent No.4

Coram: S.K. Keshote,J
Date of decision:01/04/1998

C.A.V. JUDGMENT

#. The petitioner, the Honorary Assistant Physician in

the S.S.G. Hospital, Baroda, filed this Special Civil Application and prayer has been made for directions to the respondent No.1 to declare the appointment of the petitioner on the post of Honorary Assistant Professor of Medicine at S.S.G. Hospital, Baroda, with effect from 13.2.79. Second prayer has been made for quashing and setting aside the appointment of the petitioner by respondent No.1 on the post of Honorary Assistant Physician at S.S.G. Hospital, Baroda, with effect from 13.2.79. Third prayer has been made for directing the respondent No.1 to promote the petitioner to the post of Honorary Associate Professor of Medicine / Associate Professor of medicine at S.S.G. Hospital, Baroda. So far as the other prayers made regarding quashing the promotion of respondent No.4 on the post of Honorary Associate Professor of Medicine at S.S.G. Hospital, Baroda, and other consequential prayers are concerned, the learned counsel for the petitioner does not press the same at this stage as the respondent No.4 has already retired from the services.

#. The facts of the case in brief are that vide advertisement dated 22nd September 1978, applications were invited for appointment on the post of Honorary Assistant Professor of Medicine. In response to the said advertisement, the petitioner submitted an application. The respondent No.4 is also stated to have submitted an application in response to the said advertisement. The petitioner was given appointment under the order dated 13.2.79, alongwith two other persons on purely temporary and ad hoc basis for a period upto 29.2.80, as Honorary Assistant Physician at S.S.G. Hospital, Baroda. Subsequently, in the year 1980, an advertisement was published inviting applications for the post of Honorary Assistant Professor of Medicine and in response to that advertisement, the petitioner has not submitted an application. It is stated that two other Doctors who have been appointed as Honorary Assistant Physician, alongwith the petitioner, have also not applied in response to the aforesaid advertisement for the post of Honorary Assistant Professor of Medicine. The respondent No.4, in response to the aforesaid advertisement, applied for the post of Honorary Assistant Professor of Medicine and he was selected for the said post and with effect from 15th July 1980 he was given appointment on the said post. Thereafter, one post of Honorary Associate Professor of Medicine fell vacant in the institution and the respondent No.4 was given appointment by promotion on the said post vide order dated 21st March 1985. The petitioner submitted representation against the appointment of respondent No.4 as Honorary Associate

Professor of medicine, which was followed by further reminders, but nothing has been done and as the respondent-State has continued the respondent No.4 as Honorary Associate Professor of Medicine, the petitioner has filed this petition before this Court.

#. This petition has been contested by respondent No.4 by filing Affidavit-in-reply. The respondent No.1 has not filed any reply to the Special Civil Application.

#. During the pendency of this Special Civil Application, the respondent No.4 has already retired from the services of the Government and as such the learned counsel for the petitioner does not press the prayers which relate to quashing of promotion of respondent No.4 on the post of Honorary Associate Professor of Medicine and other consequential orders. The only prayer which has been pressed by the learned counsel for the petitioner is that the petitioner may be given deemed date of promotion on the post of Honorary Assistant Professor of Medicine with all consequential benefits. The learned counsel for the petitioner contended that the appointment of the petitioner was in fact, on the post of Honorary Assistant Professor of Medicine and merely because in her appointment order, the post has been mentioned to be Honorary Assistant Physician, she could not be deprived of her promotion on the post of Honorary Associate Professor of Medicine when this post fell vacant. It has next been contended that the respondent No.4 was junior to the petitioner as in the selection in which the petitioner has been selected for the post of Honorary Assistant Physician, he was rejected. So on availability of one post of Honorary Associate Professor of Medicine, the appointment should have been made in order of seniority.

#. On the other hand, the learned counsel for respondent-State contended that this writ petition is wholly misconceived. The petitioner was not appointed on the post of Honorary Assistant Professor of Medicine, but she has been appointed on the post of Honorary Assistant Physician and that appointment has been accepted by the petitioner without any protest. The petitioner has not made any protest against that appointment and further when another post was advertised in the year 1980, she has not applied for the same, and the respondent No.4 has been selected. The respondent No.4 who has been selected on the post of Honorary Assistant Professor of Medicine has rightly been given promotion to the post of Honorary Associate Professor of Medicine.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

#. Annexure 'D', the Resolution dated 13.2.79 of the Government of Gujarat, Health & Family Welfare Department, Gandhinagar, under which the petitioner was given appointment is on the record of the Special Civil Application. From this Resolution, it is clear that the petitioner and two other Doctors named therein were appointed as Honorary Assistant Physician at S.S.G. Hospital, Baroda, on purely temporary and ad hoc basis for a period upto 29.2.80. The petitioner has not raised any objection against this order. It appears from the other document produced on record that the petitioner was posted for some time as Honorary Assistant Professor also but it is a fact that the petitioner has been appointed as an Honorary Assistant Physician and that appointment has been accepted by her without any protest. The posts of Assistant Professor of Medicines and Honorary Assistant Physician are two different and separate posts on which the learned counsel for the petitioner has not raised any dispute. When these two posts are separate posts, the petitioner should have taken note of her appointment and in case she has been given appointment on the post other than the post for which she applied, she should have raised objection then and there which precisely has not been done by the petitioner. The petitioner has also not challenged the appointment of respondent No.4 made on the post of Honorary Assistant Professor of Medicine in the year 1980, in response to the advertisement issued in the year 1980 for the post. The respondent No.4 has been appointed on the post of Honorary Assistant Professor of Medicine and as such when the post of Honorary Associate Professor of Medicine fell vacant, he has rightly been given appointment. That promotion order has also not been challenged by petitioner immediately by filing any Special Civil Application before this Court and she felt contented only by filing representation. Only when that appointment was continued the petitioner has chosen to file this Special Civil Application. The prayer of the nature which has been made by the petitioner that she should be treated to have been appointed on the post of Honorary Assistant Professor of Medicine with effect from 13.2.79 suffers from the vice of delay and laches. This Special Civil Application has been filed by the petitioner before this Court on 10th March 1986. So after more than seven years of appointment, now the petitioner's claim for declaration that her appointment should be treated to be on the post of Honorary Assistant Professor of Medicine suffers from delay. This delay has not been explained by

the petitioner. The respondent No.4, alongwith affidavit-in-reply, filed a copy of the affidavit-in-reply of the State Government filed in Special Civil Application No.3768 of 1985. From this document, I find that against one post of Honorary Assistant Professor of Medicine, which has been advertised in the year 1978, one Dr.Mrs.Kaul was given appointment. In the select list which has been prepared for one post of Honorary Assistant Professor of Medicine, in response to the advertisement of 1978, the name of the petitioner in this Special Civil Application was there as a co-appointee in the said waiting list. Otherwise also, when there was only one post advertised, I fail to see how the State Government could have made three appointments. The Government would have subsequently created three posts of Honorary Assistant Physician at S.S.G. Hospital, Baroda, and instead of making fresh recruitment on these posts, under the Government Resolution dated 12.2.79, it appears that the waiting list which has been prepared for making appointment on the post of Honorary Assistant Professor of Medicine was made use of and the petitioner and two other candidates therein were given appointments on the post of Honorary Assistant Physician at S.S.G. Hospital, Baroda. The petitioner has deliberately concealed the fact that in the select list prepared in respect of advertisement of the year 1978, her name was in the waiting list. The petitioner has further concealed the fact that Dr.Mrs.Kaul stood at No.1 in the said merit list and she has been given appointment and by concealing all these material facts, the petitioner has tried to project a picture as if she was at No.1 in the merit list. Against one post of Honorary Assistant Professor of Medicine, there was no question of making three appointments and the petitioner could get the appointment at S.S.G. Medical College, Baroda, only when three posts were created of Honorary Assistant Physician. The State Government, instead of advertising these posts, has used the waiting list prepared for the post of Honorary Assistant Professor of Medicine. The petitioner's claim for the deemed date of appointment on the post of Honorary Assistant Professor of Medicine from 13.2.79 is wholly misconceived and the same cannot be accepted.

#. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No order as to costs.

.....

(sunil)